

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PERSONAL AUDIO, LLC

Plaintiff,

v.

TOGI ENTERTAINMENT, INC., et al

Defendants.

CIVIL ACTION NO. 2:13-cv-00013

CONSOLIDATED ACTION

JURY TRIAL DEMANDED

**AGREED MOTION TO DISMISS CLAIMS INVOLVING DEFENDANTS LOTZI
DIGITAL, INC. AND A PARTNERSHIP CONSISTING OF ADAM CAROLLA, DONNY
MISRAJE, KATHEE SCHNEIDER-MISRAJE, SANDY GANZ AND DOES 1-10,
INCLUSIVE DBA “ACE BROADCASTING” AND/OR “CAROLLA DIGITAL”
WITHOUT PREJUDICE**

Plaintiff Personal Audio LLC (“Plaintiff”) and Defendants Lotzi Digital, Inc. (“Lotzi”) and A Partnership Consisting of Adam Carolla, Donny Misraje, Kathee Schneider-Misraje, Sandy Ganz and Does 1-10, Inclusive dba “Ace Broadcasting” and/or “Carolla Digital” (“Partnership”) (collectively “Defendants”) file this Agreed Motion to Dismiss Defendants Lotzi and Partnership without prejudice, and dismiss Lotzi’s counterclaims and the Partnership’s counterclaims against Plaintiff without prejudice, and would respectfully show the Court as follows:

WHEREAS, the parties herein do not anticipate further litigation with respect to the claims, counterclaims, and issues asserted in the current litigation and the parties have agreed as follows:

1. Plaintiff hereby dismisses its claims against Lotzi and the Partnership without prejudice. Lotzi and the Partnership hereby dismiss their counterclaims against Plaintiff without prejudice.

2. Lotzi and the Partnership shall not file a declaratory judgment action against Personal Audio with respect to the causes of action asserted by Plaintiff in this litigation.

3. With the exception of the press release announcing the settlement that has been approved by the Court, Personal Audio, Lotzi and the Partnership shall not make any public statements, issue any press releases or otherwise issue public comments (e.g., by providing an interview to a reporter) concerning this litigation from August 15, 2014 up to and including September 30, 2014 (“Quiet Period”). In response to any media inquiries received during the Quiet Period, it shall be permissible for the parties to either: (1) refer parties to this motion and/or any order granting this motion; or (2) say “no comment.”¹ In addition, the parties may post this motion, any order granting this motion, and the press release announcing this settlement that has been approved by the Court to their respective websites. Further, nothing in this motion shall be construed to prevent either any party or witness from testifying in a deposition, trial or other judicial proceeding or any attorney associated with a party from referring to the litigation in any deposition, trial or other judicial proceeding (e.g., in an opening statement, or other argument).

4. This Court shall retain jurisdiction to enforce the terms of this Order.

5. Each party shall bear its own costs and fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Lotzi and the Partnership respectfully request that the Court dismiss Lotzi and the Partnership without prejudice, and dismiss the counterclaims asserted by Defendants Lotzi and the Partnership against Plaintiff without prejudice on the terms set forth herein. A proposed order is attached herewith.

¹ Activity that pre-dates the Quiet Period shall not violate this requirement. For example, neither statements made in any podcasts that were recorded prior to August 15, 2014 nor articles with quotes based on interviews that took place prior to August 15, 2014 will violate this provision. In addition, none of the parties are under any obligation to remove content from any of their website(s) that was posted prior to August 15, 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2014, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the court. The electronic case files system sent a “Notice of Electronic Filing” to individuals who have consented in writing to accept this Notice as service of this document by electronic means, all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by first class mail today, August 15, 2014.

/s/ John M. Jackson
John M. Jackson